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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,308	04/07/2004	Toni Kopra	872.0187.U1(US)	7457
29683	7590	08/14/2006	EXAMINER	
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			GELIN, JEAN ALLAND	
			ART UNIT	PAPER NUMBER
			2617	
DATE MAILED: 08/14/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,308

Applicant(s)

KOPRA ET AL.

Examiner

Jean A. Gelin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is in response to the Applicant's arguments and amendments filed on May 25, 2006 in which claims 16, 18, and 19 have been amended, and claim 15 has been canceled. Claims 1-14 and 16-27 are currently pending.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 16, 17, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding to claims 1, 16, and 19, the phrase "operable of" renders the scope of the claim vague and indefinite.

Regarding to claim 22, the phrase "may be not" renders the scope of the claim vague and indefinite.

It has been held that the recitation that an element is "operable of" or "may be not" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense.

Claims depend on claims 1, 16, 17, 19, and 22 are rejected for the same reasons recited above.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6-15, 18, and 20-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Waldam (US 2002/0198789).

Regarding claims 1, Waldam teaches a mobile station (cellular phone PDA or the like ([0009]) comprising: a processor ([0009]); and a user input mechanism (i.e., input user for accepting commands [0008]) operable to cause the processor to extract at least one feature from a digital media sample, said feature being descriptive of an identity of a content of said media sample (i.e., using artist name as identifier from the sampled portion to purchase full audio work [0008-0012]).

Regarding claim 2, Waldam teaches wherein said user input mechanism is enabled to initiate different functions at different times, one such function being to cause the processor to extract the at least one feature ([0020-0021]).

Regarding claim 3, Waldam teaches wherein said user input mechanism comprises a dedicated button having a single function of causing the processor to extract the at least one feature ([0055-0060]).

Regarding claim 4, Waldam teaches a transmitter coupled to said processor, wherein a single user input at the input mechanism operates to cause the processor to extract the at least one feature, to cause the processor to initiate a wireless link to a

network, and to cause the transmitter to transmit the at least one feature over the initiated wireless link ([009, 0020, 0046]).

Regarding claim 6, Waldam teaches wherein said link is to a network address of a music recognition service, said network address stored in a storage media of said mobile station ([0056-0066]).

Regarding claim 7, Waldam teaches a receiver and a display interface coupled to one another through said processor, said display interface for displaying an identifier of the media sample in response to receiving a reply message at the receiver over the link from the network, said reply message in response to the transmitted at least one extracted feature ([0036, 0056-0060]).

Regarding claim 8, Waldam teaches wherein the identifier is a text identifier (i.e., displaying information for viewer can be text, [0036 and 0059]).

Regarding claim 9, Waldam teaches wherein the said user input mechanism comprises a first user input mechanism, the mobile station further comprising a second user input mechanism by which a user may send an authorization message over the link directed to purchasing a copy of a media file referenced in the reply message ([0054-0060]).

Regarding claim 10, Waldam teaches wherein said authorization message is an authorization to immediately download said copy of the media file to the mobile station over the link that is automatically compiled in response to receiving the reply message ([0058-0062]).

Regarding claim 11, Waldam teaches wherein said first and second user input mechanisms comprise a single input mechanism that effects first and second functions, respectively, at different times ([0009, 0020]).

Regarding claim 12, Waldam teaches wherein said single input mechanism comprises a button that changes from said first to said second function following receipt of said reply message ([0009, 0020]).

Regarding claim 13, Waldam teaches wherein said single button is enabled to effect only the first and second functions ([0009, 0020]).

Regarding claim 14, Waldam teaches a storage media and a display interface by which a digital media sample stored in the storage media may be selected, said user input mechanism operating to cause the processor to extract at least one feature from a digital media sample stored in the storage media ([0055-0064]).

Regarding claim 15, Waldam teaches wherein the means to receive a media sample comprises a transducer to receive an analog media sample from which is derived the digital media sample from which the processor extracts the at least one feature ([0060-0062]).

Regarding claim 18, Waldam teaches means to receive the digital media sample from which the processor extracts the at least one feature ([0042-0045]), and a display interface to display a symbol corresponding to the received digital media sample ([0054-0059]).

Regarding claim 20, Waldam teaches user interface of a portable electronic device ([0009, 0020]) comprising: a user input mechanism enabled to cause a

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processor internal to the device to extract a plurality of features from a digital media sample, and to cause the plurality of extracted features to be transmitted outside the device, upon a single user entry at the user input mechanism ([0034-0035]); and a display screen to display, automatically in response to the device receiving a reply message to the plurality of extracted features that is transmitted, a text identifier of a media file having features that exactly match the plurality of extracted features ([0036, 0057-0060]), wherein the plurality of extracted features are descriptive of an identity of a content of said media sample ([0054-0056]).

Regarding claim 21-22, Waldam teaches wherein the user input mechanism is further enabled to cause an authorization message to be transmitted outside the device following receipt of the reply message, said authorization message comprising: a media file identifier received in the reply message, and a request to download to the device a copy of said media file ([0064-0065]).

Regarding claim 25, Waldam teaches transmitting means, and the user input means further are for causing the transmitting means, automatically following the processing means extracting the at least one feature, to transmit a message that comprises the at least one extracted feature ([0040, 0053, 0062]).

Regarding claim 26, Waldam teaches a program of machine-readable instructions, tangibly embodied on an information bearing medium within a mobile station and executable by a digital data processor, to perform actions directed toward analyzing a media sample ([0031-0032]), the actions comprising: in response to a user

input, extracting features from a digital version of a media sample and causing a transmitter to wirelessly transmit the extracted features ([0032-0035]).

Regarding claim 27, Waldam teaches where the features are extracted and the transmitter is caused to wirelessly transmit in response to the same user input ([0032]).

### ***Allowable Subject Matter***

6. Claims 16-19 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

7. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

8. Applicant's arguments filed 5/19/06 have been fully considered but they are not persuasive.

The Applicant argues that Waldham describes taking a sampled portion of a full audio work and transmitting it to an audio recognition service for identification of the audio work, Waldham does not teach a feature from a digital media sample, said feature being descriptive of an identity of a content of said media sample. However, the Examiner disagrees with the preceding assertion. As described in the specification of the application features of a song sample are extracted in order to search a database of songs and identify the sampled song's title (or version, artist, etc.) from among many



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thousands or even millions. According to the specification, the Examiner interprets feature from a digital media sample as an identifier wherein the artist name can be used as identifier from the sampled portion to purchase full audio work [0008-0012]). Therefore, the Examiner maintains the rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Christensen et al.	US 6,957,041	10/18/2005
Herley	US 6,766,523	07/20/2004
Dorak, Jr.	US 6,389,403	05/14/2002
Wiser et al.	US 6,385,596	05/07/2002
Milsted et al.	US 6,345,256	02/05/2002
Fritsch	US 6,233,682	05/18/2001

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

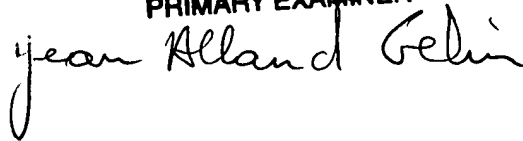
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin  
August 2, 2006

**JEAN GELIN**  
**PRIMARY EXAMINER**

A handwritten signature in cursive script that reads "jean Allard Gelin". The signature is written in black ink and is positioned below the printed name and title.